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7
8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 1H 2007 638

11 PETER M. CALLAHAN
12 150 Avocado Road
Watsonville, CA 95076

A C C U S A T I O N

13
14 Respiratory Care Practitioner License No. 18069

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Respiratory Care Board of California,
21 Department of Consumer Affairs.

22 2. On or about September 6, 1995, the Respiratory Care Board issued
23 Respiratory Care Practitioner License No. 18069 to Peter M. Callahan (Respondent). The
24 Respiratory care practitioner license was in full force and effect at all times relevant to the
25 charges brought herein and will expire on May 31, 2009, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Respiratory Care Board (Board),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “(d) Conviction of a crime that substantially relates to the qualifications,
12 functions, or duties of a respiratory care practitioner. The record of conviction or a
13 certified copy thereof shall be conclusive evidence of the conviction.

14 “(g) Conviction of a violation of any of the provisions of this chapter or of any
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
17 violate any provision or term of this chapter or of any provision of Division 2
18 (commencing with Section 500).

19 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
20 substantially related to the qualifications, functions, or duties of a respiratory care
21 practitioner.”

22 7. Section 3752 of the Code states:

23 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
24 made to a charge of any offense which substantially relates to the qualifications,
25 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
26 the meaning of this article. The board shall order the license suspended or revoked, or
27 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
28 conviction has been affirmed on appeal or when an order granting probation is made

1 suspending the imposition of sentence, irrespective of a subsequent order under Section
2 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
3 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
4 accusation, information, or indictment.”

5 8. Section 492 of the Code states:

6 “Notwithstanding any other provision of law, successful completion of any diversion
7 program under the Penal Code, or successful completion of an alcohol and drug problem
8 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
9 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
10 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in
11 that division, from taking disciplinary action against a licensee or from denying a license for
12 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
13 record pertaining to an arrest.”

14 “This section shall not be construed to apply to any drug diversion program operated by
15 any agency established under Division 2 (commencing with Section 500) of this code, or any
16 initiative act referred to in that division.”

17 COST RECOVERY

18 9. Section 3753.5, subdivision (a) of the Code states:

19 "In any order issued in resolution of a disciplinary proceeding before the board,
20 the board or the administrative law judge may direct any practitioner or applicant found to have
21 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
22 investigation and prosecution of the case."

23 10. Section 3753.7 of the Code states:

24 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
25 include attorney general or other prosecuting attorney fees, expert witness fees, and other
26 administrative, filing, and service fees."

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11. Section 3753.1 of the Code states:

"(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation. "

12. California Code of Regulations (CCR), title 16, section 1399.370, states:

“For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

“(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act.”

“(c) Conviction of a crime involving driving under the influence or reckless driving while under the influence.”

FIRST CAUSE FOR DISCIPLINE

(Conviction)

13. Respondent is subject to disciplinary action under code sections 3750(d), 3750(g), 3752 [conviction of a substantially-related crime] and CCR 1399.370(a) and (c) [conviction of a crime involving driving under the influence] in that he has two alcohol-related convictions in 2008. The circumstances are as follows:

March 5, 2008 conviction

14. On or about October 27, 2007 at approximately 11:19 p.m., California Highway Patrol (CHP) Officers Smith and Barry received a call of a traffic collision with ambulance needed. They responded to the scene, and observed damage to a Pacific Gas & Electric (PG&E) guide wire support pole that was sheared off from its base, and was hanging over the road. They also observed damage to a wooden fence, and a white Nissan Altima located on the driveway and front lawn of a residence. The owner of the residence stated that the vehicle

1 did not belong to her, and she did not know the identity of the owner. The Nissan had major
2 collision damage to the left and right side front fenders, damage to the front end, and the front
3 windshield was cracked due to the deployment of both airbags. Fire Department personnel were
4 at the scene, and stated that the sole occupant of the vehicle had walked away from the collision,
5 into an adjacent apple orchard.

6 15. Officer Pauly ran a registration check on the vehicle, and learned that
7 respondent was listed as the owner at an address north of the collision scene. Officer Smith
8 smashed the window of the vehicle to gain access to the interior, since the doors were locked.
9 Inside the vehicle were checkbooks in respondent's name and mail addressed to him, as well as a
10 business card with respondent's photo.

11 16. Officer Smith interviewed Witness-1, who had telephoned 911. Witness-1
12 stated that he heard the collision, went outside his house and saw one male dressed in black
13 clothing get out of the vehicle on Witness-1's property, and walk away. Witness-1 stated that he
14 yelled for the person to stop. He heard the man moaning as if hurt, but he continued walking
15 away from the scene. After viewing respondent's business card, Witness-1 identified respondent
16 as the man he had seen walking away.

17 17. Officers Barry and Smith went to respondent's home to interview him.
18 Respondent was leaning against a car in the driveway when they arrived. As Officer Smith
19 approached respondent, he smelled a strong odor of alcohol on his person. He observed that
20 respondent had a cut on his right wrist, scrape marks to his right knee, a cut on his right ear,
21 abrasions to his nose, and a raised and red seatbelt abrasion across the left side of his lower neck.
22 Respondent admitted that he had been driving a Nissan at about 40 miles per hour when a large
23 buck ran across the road directly in front of him, and he swerved to the right to avoid hitting the
24 deer. Respondent stated that he hit some bushes, then walked home to call the police. He denied
25 feeling any impact, but he did notice the airbags deployed in his vehicle. He stated that he had
26 walked through the apple orchard because it was a shortcut to his house. As Officer Smith talked
27 to respondent, he noticed that respondent's speech was slurred, and that his eyes were red and
28 watery. Respondent denied that anyone called out to him when he walked away from the scene,

1 and denied that anyone was present at all. Respondent stated that when he arrived home, he
2 changed his pants; then he stated that he changed all his clothing. He stated that as soon as he
3 did this, the Highway Patrol officers arrived. Officer Smith advised respondent that he had
4 struck a PG&E pole, a fence and a tree. Respondent denied doing so.

5 18. Respondent denied drinking any alcohol prior to the collision. When
6 Officer Smith informed him that he could smell a strong odor of alcohol on his breath and his
7 person, respondent again denied drinking alcohol. Respondent admitted that he was taking
8 medications for depression and high blood pressure. When asked if the medication labels
9 warned against taking the medication and drinking alcohol, respondent stated that he never
10 looked at the containers for warnings.

11 19. Officer Smith asked respondent to perform field sobriety tests (FSTs), and
12 initially, he complied. However, respondent nearly fell over during the modified position of
13 attention test, after which he refused to complete any additional FSTs, stating, "this is
14 ridiculous."

15 20. Based on the traffic collision, the objective signs of intoxication, and his
16 FST performance, Officer Smith determined that respondent had been driving under the
17 influence of alcohol, and arrested him for violations of Vehicle Code sections 20002(a)(1)
18 [failure to stop vehicle at the scene of an accident] and 23152(a) [driving under the influence of
19 alcohol.] In addition to these charges, Officer Smith recommended prosecution for violations of
20 Vehicle Code section 23152(b) [driving with a blood alcohol content above .08%.]

21 21. As they drove enroute to Dominican Hospital for a blood test and passed
22 the collision area, respondent was in disbelief at the amount of damage that he had caused, and
23 stated, "No way, no way, I just hit some bushes." At approximately 1:40 a.m., respondent
24 submitted to a blood sample. His test results were positive for alcohol in the amount of .19%. In
25 his arrest report forwarded to the District Attorney, Officer Smith recommended a penalty
26 enhancement at the time of sentencing for Vehicle Code section 23578 [DUI with a blood
27 alcohol content of .15% or higher.]

28 22. On or about November 6, 2007, a criminal complaint titled *People of the*

State of California vs. Peter Matthew Callahan, case no. W13401, was filed in Superior Court for Santa Cruz County. Count 1 charged respondent with a misdemeanor violation of Vehicle Code section 23152(a) [driving under the influence of alcohol.] Count 2 charged respondent with a misdemeanor violation of Vehicle Code section 20002(a)(1) [failure to stop vehicle at the scene of an accident.]

23. On or about December 10, 2007, a First Amended criminal complaint was filed. Count 1 charged respondent with a misdemeanor violation of Vehicle Code section 23152(a) [driving under the influence of alcohol.] Count 2 charged respondent with a misdemeanor violation of Vehicle Code section 23152(b) [driving while having a .08% or higher blood alcohol.] Count 3 charged respondent with a misdemeanor violation of Vehicle Code section 20002(a)(1) [failure to stop vehicle at the scene of an accident.]

24. On or about December 11, 2007, respondent entered a plea of not guilty to all counts. On or about March 5, 2008, respondent was convicted on his plea of nolo contendere to Count 2, a misdemeanor violation of Vehicle Code section 23152(b) [driving while having a .08% or higher blood alcohol.] Counts 1 and 3 were dismissed. Respondent was granted a conditional sentence for sixty months. He was ordered to serve ten days in the County Jail, and allowed to serve in the CAMP program; he was given credit for 10 days. He was ordered to pay fines totaling \$2,088.00, pay restitution, submit to chemical testing if stopped for driving under the influence, and other conditions.

May 9, 2008 Conviction

25. On or about May 9, 2008, respondent was convicted on his plea of no contest to a violation of Penal Code section 647(f) [drunk in public.] The circumstances are as follows:

26. On or about June 1, 2007, at about 1:30 p.m., California Highway Patrol Officer D. Bratby assisted State of California Ranger Wilson in an evaluation of an incident involving operating a boat while under the influence of alcohol at Manressa State Beach. Upon his arrival at the state beach parking lot, Officer Bratby observed a small boat off the shore next to a capsized boat just beyond the surf. Ranger Wilson advised Officer Bratby that an individual

1 later identified as respondent by his driver's license had been on the capsized boat, and swum to
2 shore. A lifeguard advised Ranger Wilson that respondent had trouble maintaining his balance
3 and complained that he was extremely cold. Due to possible hypothermia, respondent's clothing
4 had been removed and he was wrapped in a blanket. Ranger Wilson advised that he had
5 interviewed respondent, and smelled alcohol on respondent's breath. In a supplemental report,
6 Ranger Wilson summarized respondent's statements: "I launched my boat from Capitola and
7 accidentally got inside the breakers when my boat was swamped. I've had a little to drink today.
8 I was driving the boat and was the only one on board. It is my boat. Actually, I deny that - I
9 haven't had anything to drink. I'm having trouble standing because I'm cold and because I'm on
10 prescription medication called Niravam."

11 27. Officer Bratby interviewed respondent, who was seated in the Ranger's
12 vehicle. As soon as Officer Bratby walked to the open passenger window of the vehicle, he
13 smelled alcohol on respondent's person. Officer Bratby asked respondent if he had consumed
14 any alcohol earlier that day. Respondent admitted he drank wine with his lunch on the boat at
15 around 7:30 a.m., but only one cup. Respondent provided an explanation of the incident, stating
16 that he had gone out on the boat from the Capitola Harbor to fish for awhile. He had lunch on
17 the boat and was coming back in when the fog came in. He decided to go toward the shore and
18 follow it back to Capitola. When he got close to shore, the boat was swamped by waves.
19 Respondent stated that the pump must have gotten clogged because water was not pumping out
20 of the boat fast enough. A larger wave swamped the back of the boat and it started to sink.
21 Respondent then jumped off and swam to shore. Once he reached shore, the emergency
22 personnel arrived.

23 28. While respondent related his version of events, Officer Bratby observed
24 that respondent's eyes were watery, his face was red and flushed. Officer Bratby requested that
25 respondent perform field sobriety tests (FST) to determine if he was under the influence of
26 alcohol. Respondent was unable to successfully perform the FSTs. Respondent submitted to a
27 preliminary alcohol screening (PAS) test. His test results were positive for alcohol in the amount
28 of .175%/.163%.

1 29. Based on respondent's poor performance on the FSTs, his PAS test results,
2 and his objective signs of intoxication, Officer Bratby determined that respondent had been
3 operating his boat in the Monterey Bay while under the influence of alcohol, in violation of
4 Harbor and Navigation Code section 655. At approximately 2:20 p.m., Officer Bratby arrested
5 respondent, and placed him in a patrol vehicle. Before they left the scene, Respondent
6 authorized use of a credit card to pay for removal of his boat from the bay. Respondent refused
7 to take a breath/blood/urine test, and he was transported to Santa Cruz County jail where he was
8 booked.

9 30. On or about July 3, 2007, a criminal complaint titled *People of the State of*
10 *California vs. Peter Matthew Callahan*, case no. W12756 was filed in Superior Court, Santa
11 Cruz County. Count 1 charged respondent with a misdemeanor violation of Harbor and
12 Navigation Code section 655 [operating a boat while under the influence of alcohol.] Count 2
13 charged respondent with a misdemeanor violation of Harbor and Navigation Code section 655(c)
14 [operating a boat while having .08% or more alcohol level.]

15 31. On or about July 3, 2007, respondent entered a plea of not guilty to all
16 counts. On or about April 25, 2008, Count 3 was added to the criminal complaint, a violation of
17 Penal Code section 647(f) [drunk in public.] Respondent entered a plea of nolo contendere, and
18 Counts 1 and 2 were dismissed in view of his plea on Count 3.

19 32. On May 9, 2008, respondent was convicted of a misdemeanor violation of
20 Penal Code section 647(f) [drunk in public.] Imposition of sentence was suspended, and a
21 conditional sentence was granted for twelve months. He was ordered to pay fines and enter and
22 complete Narcotics Anonymous (NA)/Alcoholics Anonymous (AA) four times per week.
23 Respondent is scheduled for a review of his conditional sentence on October 27, 2008.

24 33. Therefore, respondent's license is subject to discipline based on his two
25 alcohol-related convictions, which are substantially related to the practice of respiratory care, and
26 are in violation of code sections 3750(d), 3750(g), 3752 [conviction of a substantially-related
27 crime] and CCR 1399.370(a) and (c) [conviction of a crime involving driving under the
28 influence.]

1 SECOND CAUSE FOR DISCIPLINE

2 (Dishonest Act)

3 34. Paragraphs 14 through 33 are incorporated herein.

4 35. On October 27, 2007, when interviewed by CHP Officer Smith,
5 Respondent denied drinking alcohol prior to driving. On June 1, 2007, when interviewed by
6 Ranger Wilson, respondent denied drinking alcohol. On both occasions, test results indicated
7 respondent had ingested alcohol. Therefore, respondent's license is subject to discipline pursuant
8 to code section 3750(j) [dishonest act] in that he knowingly made false statements.

9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

12 1. Revoking or suspending Respiratory Care Practitioner License No. 18069,
13 issued to Peter M. Callahan.

14 2. Ordering Peter M. Callahan to pay the Respiratory Care Board the costs of
15 the investigation and enforcement of this case, and if placed on probation, the costs of probation
16 monitoring;

17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: August 18, 2008

19
20
21 Original signed by Christine Molina for:
22 STEPHANIE NUNEZ
23 Executive Officer
24 Respiratory Care Board of California
25 Department of Consumer Affairs
26 State of California
27 Complainant
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